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No. 1140

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1967

Jerry D. Chaney,

Petitioner,

vs.

The State Bar of California, et al

Petition for a Writ of Certiorari to The United States Court of Appeals for the Ninth Circuit

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Jerry D. Chaney
1800 W. Lincoln Ave., Apt. 227
Anaheim, California 92801

Appearing in Propria Persona

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In the Supreme Court of the United States

October Term, 1967

No. _____

Jerry D. Chaney,

Petitioner,

vs.

The State Bar of California, et al

Respondent.

Petition for a Writ of Certiorari to
The United States Court of Appeals
for the Ninth Circuit

INTRODUCTION

Jerry D. Chaney, your petitioner, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered in the above-entitled case on November 21, 1967.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit in the above-entitled case, to the best

of your petitioner's knowledge, is unreported as of this time The full text of the opinion, however, is contained in Appendix I of this petition.

JURISDICTION

The jurisdiction of this court is invoked under 28 USCA 1254 (1).

QUESTIONS PRESENTED

1. Whether the State Bar of California has the right, in the giving of an examination to determine if one meets the minimum standards to practice law, to give an examination which calls for totally subjective grading.

2. Whether any regulatory agency, acting under color of law, can, when regulating in a field that involves a constitutional right, regulate in a manner that is arbitrary.

3. Whether the State Bar of California can, when demanding high standards of applicants for admission to the bar, determine the minimum standard to be that which exists in the subjective opinion of the grader at the time he grades an examination paper.

4. Whether the State Bar of California can, in determining who meets

minimum requirements for admittance to the bar, give an examination which has no useful or practical effect other than that it enables the State Bar to limit the number of persons gaining admittance to the bar.

5. Whether the petitioner suffered a deprivation under 42 USC 1983.

6. Whether the plaintiff should have first exhausted his state remedy, if any, before seeking relief under 42 USC 1983.

7. Whether the applicant states a cause of action in his complaint.

8. Whether the State Bar of California is a person within the meaning of 42 USC 1983.

9. Whether the board of governors and/or the committee of bar examiners of the State Bar of California are immune from suit under 42 USC 1983.

10. Whether an effective decree granting the injunctive relief sought by the petitioner in this action could be framed.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Constitutional Provisions

The 14th Amendment of the United States Constitution provides in pertinent part as follows:

> "Nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

Federal Statutes

Section 1983 of the United States Code, Title 42, provides as follows:

> "Every person, who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws,

shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

State Statutes

The California Business and Professions Code (hereinafter referred to as the B & P Code) provides in pertinent part as follows:

Section 6001: "The State Bar is a public corporation. It is hereinafter designated the State Bar.
The State Bar has perpetual succession and a seal and it may sue and be sued."

Section 6046: "The Board may establish an examining committee having the power to certify to the Supreme Court for admission those applicants who fulfill the requirements provided in this chapter."

Section 6068, Subsection 2: "The committee shall certify to the Supreme Court for admission to practice law those persons who

fulfill the requirements for admission."

Section 6068, Rule XI, Subsection 111: "Every general applicant shall...take an examination known as the bar examination which shall be conducted either by the committee or under its supervision or pursuant to its direction...."

Section 6068, Rule XI, Subsection 112: "The examination shall be written and shall consist of such questions as the committee may select."

Section 6068, Rule XI, Subsection 113: "The passing grade shall be 70 per cent of the highest possible grade and an applicant who does not receive a passing grade shall not be eligible for certification to the court for admission to practice law."

Section 6125: "No person shall practice law in this state unless he is an active member of the State Bar."

Section 6002: (Taken out of order for effect) "The members of the State Bar are all persons admitted and licensed to practice law in this state...."

STATEMENT OF CASE

Petitioner took the bar examinations given by the State Bar of California in the fall of 1965 and the spring of 1966. He was informed that he did not pass either examination. Petitioner, on May 26, 1966, filed a complaint (labeled petition) in the United States District Court for Southern California, Central Division, alleging the examinations were given in a manner which violated his constitutionally secured right to pursue an occupation. He named as defendants the State Bar of California, and five individuals, John A. Sutro, J. N. De Meo and A. Steven Halsted Jr., members of the board of governors of the State Bar of California, and David B. Heyler, Jr. and Peter J. Crosby Jr., as members of the committee of bar examiners for the State Bar of California, and invoked the court's jurisdiction under 28 USC 1343 and 42 USC 1983 (Civil Rights Act).

The complaint sought general damages in the amount of $40,000. plus $100,000. for injury to reputation and $500,000. in punitive damages. The complaint further prayed for injunctions requiring:

1. That the court direct the defendants to certify him for admission.
2. That the court order the defendants to cease and desist from conducting subjective or arbitrary examinations.
3. That the court order the defendants to refrain from engaging in any scheme or plan which has as one of its purposes the controlling of competition among attorneys.

Defendants moved for dismissal, and the motion was granted June 24, 1966. Petitioner appealed to the United States Court of Appeals for the Ninth Circuit. Judgment of the lower court was affirmed November 21, 1967.

REASONS FOR GRANTING WRIT

I

The decision below conflicts with decisions of this court on important

issues affecting a federal constitutional right.

A

The decision below affirms a United states District Court holding that the complaint raised no constitutional issue of substance. The decision below held that "California (presumably meaning the State Bar) has the right" to give a subjective type examination (see page 3, Appendix I).

In Louisana vs United States, 380, U.S. 145, this court held an identical type situation unconstitutional. In that case, the following four elements were present: (1) A regulating agency (voter registrar), acting under color of state law, was (2) determining who qualified (3) to exercise a constitutionally secured right (the right to vote) by (4) the giving of a subjective type examination. (The examination was called a "reasonable interpretation test" in which the grader determined in his judgment which applicants gave a reasonable interpretation of a section of the United States Constitution.)

The same four elements are present in the instant case, namely: (1) A regulating agency (the State Bar), acting under color of state law, (2) determined whether or not petitioner qualified to (3) exercise a constitutionally secured right (the right to pursue any of the common occupations of life, Meyer vs. Nebraska, 262 U.S. 390, including the practice of law, Schware vs. Board of Examiners, 353 U.S. 232, by (4) giving him a subjective type examination. (He was asked to discuss legal issues to the satisfaction of the grader).

Although petitioner cited Louisiana vs. United States, supra, as authority for his contention, the decision below makes no reference to it and makes no effort to reconcile it with the instant case.

'B

The decision below affirming a United States District Court holding that the complaint stated no constitutional issue of substance is in direct conflict with the holding of this court in Schware vs. Board of Examiners, supra, in which Justice Frankfurter said in a separate opinion:

of the thing he complains of.

The court below apparently did not consider that part of 42 USC 1983 which says: "Every person, who under color of any statute...subjects, or causes to be subjected...." Petitioner contends that refusal of the State Bar to certify an applicant for admission to practice is tantamount to Supreme Court refusal. To support this contention, petitioner did, on January 20, 1968, make a motion to the Supreme Court of California (See Exhibit A) that he be admitted to the practice of law. The court returned the motion, stating that the proper course of action was to seek a review (presumably of petitioner's grades in the bar examinations). The Supreme Court of California has held that it will not substitute its judgment for that of the graders in a review of bar examination papers. Salot vs State Bar, 3 C 2nd 615; Staley vs State Bar, 17 C 2nd 119. Thus, petitioner is completely blocked from practicing law as a result of State Bar action.

Petitioner's motion also appears to satisfy the conditions set forth by the lower court to establish the deprivation

complained of:

> "The significance of this is that...a refusal of certification is not a power of deprivation. Only if the Court expressly or impliedly approves the Committee's refusal to certify so as to make this the basis or allow it to have the effect of denial of admission can the Committee's actions of examination and refusal to certify come to be a fixative status and have the stature of a deprivation." (See Appendix A, page 6)

In summary, petitioner contends the State Bar caused him to be deprived of a federally protected right. Therefore, he is entitled to seek redress in federal district court under 42 USC 1983, whether there is a state remedy or not. Monroe vs Pape, 365 U.S. 167; McNeese vs Board of Examiners, 373 U.S. 668.

II

The court below did not specifically rule on questions six, seven, eight, nine, and ten, supra, all of which defendants have raised in their brief and points and

authorities. Petitioner, in the interest of ending this litigation, respectfully requests this court to rule on these questions. Petitioner believes this court has before it all the arguments and authorities necessary to reach a decision in each of the questions. *

III

THE PUBLIC IMPORTANCE OF THE ISSUES PRESENTED

A

Petitioner believes the question as to whether or not a regulatory agency can assume arbitrary power (the power to act according to one's own will or caprice) is of uppermost importance to our Democracy, for in this question lies the nation's guiding concept - that we shall have a government of laws, rather than of men. The question has added importance because a trend in the direction of arbitrary control by governmental agencies, or agencies acting under color of law, is apparent. Petitioner views this trend with grave concern. Where power is un-

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* Points in answer to opinion of court below are contained in Appendix II

bridled, conduct becomes unbridled. And, beyond this, is the feeling of free men that they do not want to live under the yoke of a ruler. This court stated the same view in Yick Wo vs. Hopkins, 118 U.S. 356:

> "But the fundamental rights of life, liberty, and the pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts Bill of Rights, 'the government of the commonwealth may be a government of laws and not of men.' For, the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where

freedom prevails, as being the essence of slavery itself."

Petitioner hopes that this court will not forget those words and that it will not take a step backwards in civilization by refusing to apply them to this case.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for certiorari should be granted.

_____
Jerry D. Chaney
Petitioner

_____
Date

APPENDIX I

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JERRY D. CHANEY,
Appellant,

vs.

THE STATE BAR OF CALIFORNIA, et al.,
Appellees.

No. 21,402

[November 21, 1967]

Appeal from the United States District Court
for the Central District of California

Before: CHAMBERS, Chief Judge, JOHNSEN* and KOELSCH, Circuit Judges.

JOHNSEN, Senior Circuit Judge.

A law school graduate, not elsewhere admitted to the practice, took the examination required for admission to the California bar and twice failed to pass. He was eligible to take the examination a third time but chose not to do so. Instead, he brought suit under the Civil Rights Act of 1871, 42 U.S.C. §1983, against the State Bar of California, members of its Board of Governors, and members of its Committee of Bar Examiners, in injunction and damages, for not being certified to the Supreme Court of California for admission.

The District Court dismissed the action and we affirm. We do so on the grounds that the alleged wrong upon which the suit is predicated does not involve any issue of constitutional substance; that, even if it had, this would not enable a suit to be maintained in the situation under the Civil Rights Act; and

*Harvey M. Johnsen, Senior Circuit Judge of the Eighth Circuit, sitting by designation.

that it does not otherwise provide basis for any federal claim on which the court could grant relief. It may be observed in this connection that opportunity was accorded appellant to make any amendment or supplement to his complaint that he thought possible, but he stated he had none.

The extent to which federal concern is entitled to exist as to the right to be admitted to the practice of law in a State has been stated by the Supreme Court as follows in *Schware v. Board of Examiners of New Mexico*, 353 U.S. 232, 238-239, 77 S.Ct. 752, 756, 1 L.Ed.2d 796:

> "A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment. • • • A State can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant's fitness or capacity to practice law. • • • Even in applying permissible standards, officers of a State cannot exclude an applicant when there is no basis for their finding that he fails to meet these standards, or when their action is invidiously discriminatory".

Appellant does not purport to claim, within the conditions of *Schware*, that there was no basis for the Committee of Bar Examiners' finding that he failed to pass the examinations taken by him. Nor does he purport to claim that the Committee was without basis to find that those whom it certified to the Supreme Court for admission had passed the examination so as to involve invidiously discriminatory action in this respect against him. His primary attack is a general one upon the form or type of examination regularly employed by the Committee and used by it in the two examinations taken by appellant.

The Committee's examinations have in form consisted of sets of questions covering some 24 subjects of the law, calling for discussion or essay answers and thus requiring exercise and demonstration of analytical and reasoning capacity. It admittedly is the form of examination employed generally in the law schools of the country, and the form suggested for bar-admission use in

the American Bar Association's Recommended Standards for Bar Examiners (1959), as follows: "The major portion of the Bar examination should consist of questions in the form of hypothetical fact problems requiring essay answers."

Within the recognition contained in *Schware* of the right of a State to require high standards of relevant qualification for admission to its bar, and in relation to the condition thereof that any such required qualification must however have "a rational connection with the applicant's fitness or capacity to practice law", we are unable to see any possible federal question in the fact of the use by California of the essay-type examination as such. To us it seems patent on its face that California has the right to allow its Committee of Bar Examiners to use such a type of examination in demonstration by those seeking admission to its bar, as a qualification standard, that they have the capacity to analyze general legal situations and to make application thereto of such general legal knowledge as can be expected to be possessed by the graduates of accredited law schools. The existence of this qualification certainly has a rational connection with the capacity to practice law, for it inherently is the primary basis of general legal service. And of course there also is involved in such an essay examination an indication as to the possession or lack of knowledge in the legal fields to which the questions relate. There can therefore exist no constitutional substance in such theoretical attacks of appellant as that essay-type examinations are fundamentally unfair and improper, because the grading thereof is a matter of subjective evaluation by the examiner so that the marks given can and are likely to turn on how closely the applicant's discussion and solution correspond with the examiner's personal views or legal philosophy; that within the discretionary range which is open to exercise in subjective evaluation, whether motivatedly or unmotivatedly done, there is no possible way that the examiner's grade can be demonstrated to be wrong; and that it therefore should in legal fairness be held that the Committee can have the right only to give examinations of an objective character which are without any margin for discretion in grading—such as questions calling for "yes" or "no" answers, or questions otherwise subject to determination of correctness of answer definitively, like [in example given by appellant] "List the grounds for demurrer in the State of California".

But beyond the theoretical attacks made upon the form or type of examination employed by the Committee (appellant has urged others which are even more legally frivolous), the complaint also makes a general insinuative charge that the California examinations have been used "to control competition". The record shows that in his memorandum in the District Court appellant made the following argument, although this has not been carried into his brief here: "In 30 consecutive bar examinations only 50.7 per cent passed the spring examinations and only 53.5 per cent passed the fall examinations. *State Bar Journal, Vol. 39, 1964, p. 158:* only slightly over 42 per cent passed the March, 1966, examination [the last one taken by appellant]. This is ample evidence that the examinations are actually being used as a device to keep down competition among attorneys".

As is sufficiently implied by our discussion of the attacks made upon the form of examination employed by the Committee, it cannot be held legally that essay-type examinations will from their very nature have operation and effect to unfairly restrict admissions. Appellant's charge that the examinations are being used "to control competition" can therefore only have basis (1) if the Committee has been engaging in dishonest grading to accomplish that end, or (2) if it is giving examinations of such scope or difficulty as to be outside the bounds of the educational prescriptions which the California statute has made the basis for the right to take the examination.

Appellant made it clear in the hearing on appellees' motion to dismiss that he was not intending to assert or rely upon a claim of dishonest grading. Nor could such a general claim, if made, have had any application to his personal situation. As has been stated, he was not contending that he was entitled to certification on the basis of having in fact passed the examination, but on the basis of having been illegally frustrated of a proper opportunity to obtain certification because of the form and nature of the examinations which the Committee was employing.

As to any intended implication that, apart from the alleged unfairness of the form of the examination as such, the Committee was giving examinations of a scope or difficulty beyond the standard of the educational prescriptions which had been made the basis of the right to take the examination, and so was engaging in

unauthorized qualification requirements, the situation is in our opinion without any basis of possible substance on which such a contention legally could be made. In California's right to require high standards of qualification for admission to its bar, as recognized by *Schware,* it would implicitly be entitled to make its bar examinations more comprehensive and difficult than other States might choose to do. Thus, whatever should be the extent of comprehensiveness or difficulty which it saw fit to allow its Committee of Bar Examiners to employ in examination policy, this could not afford basis for any legal challenge, except as the qualification required to pass the examinations could be demonstrated to unarguably be outside the bounds of the educational prescriptions which had been made the basis for the right to take the examination. But unarguable demonstration that such an improper qualification requirement was being engaged in by the Committee could hardly be recognized as legally possible when some 50 per cent of those taking the California examinations have through the years been able to pass them on the basis of the statutory educational prescriptions.

There is also, however, another reason why appellant's grievance at not being certified by the Committee cannot be made the basis of the present action. Under California law, refusal of the Committee to certify an applicant to the Supreme Court is not a terminative or fixative step in his seeking of admission to the bar. Neither the State Bar of California nor its Board of Governors nor its Committee of Bar Examiners has any power to grant or to deny admission to the bar. That power is vested in the California Supreme Court alone. *In re Lacey,* 11 Cal.2d 699, 701, 81 P.2d 935, 936; *Preston v. State Bar of California,* 28 Cal.2d 643, 650, 171 P.2d 435, 438-439.

The Committee of Bar Examiners (authorized by statute to be established by and serve for the Board of Governors) constitutes under California law merely an instrumentality or "arm" of the Supreme Court "for the purpose of assisting in matters of admission * * *". Id. It is authorized to administer the requirements for admission, to examine all applicants, and to certify those whom it finds to have fulfilled the requirements for admission. Cal. Bus. & Prof. Code, §6046. But certification or refusal by it to certify is legally simply a recommendation to the Court. "The recommenda-

tion • • • is advisory only • • •"; the Court "has the inherent power and authority to admit an applicant to practice law • • • despite an unfavorable report • • •"; "the final determination in all these matters rests with this court" (California Supreme Court); and "its powers in that regard are plenary". *Lacey* and *Preston*, supra, ibid.

Statutory provision exists that "[a]ny person refused certification [by the Committee] may have the action • • • reviewed by the Supreme Court, in accordance with the procedure prescribed by the court". Cal. Bus. & Prof. Code, §6066. The Court has made the refusal of the Committee to certify an applicant procedurally subject to consideration by it through the filing of a petition for review. Rule 59, Rules of Practice and Procedure of the Supreme Court of California (36 Cal.2d 43). It is to be particularly noted that what is involved in the Court's dealing with such situations is, as *Konigsberg v. State Bar of California*, 353 U.S. 252, 254, 77 S.Ct. 722, 724, 1 L.Ed.2d 810, has recognized, not the exercise of restricted appellate function but of original jurisdictional power.

The significance of this is that under California law a refusal of certification by the Committee is not a power of deprivation. Only if the Court expressly or impliedly approves the Committee's refusal to certify so as to make this the basis or allow it to have the effect of a denial of admission can the Committee's actions of examination and refusal to certify come to be a fixative status and have the stature of a deprivation.

Thus the situation here is not a matter of exhausting state remedies in respect to an alleged federal right, but of there being no basis for any alleged federal right to exist as to the Committee's actions until the California Supreme Court in the exercise of its original power over admissions has allowed these actions to serve as a deprivation. The holding of *Monroe v. Pape*, 365 U.S. 167, 183, 81 S.Ct. 473, 482, 5 L.Ed.2d 492, and *McNeese v. Board of Education*, 373 U.S. 667, 671-672, 83 S.Ct. 1432, 1435, 10 L.Ed.2d 622, that it is not necessary to exhaust state remedies before a suit can be instituted under the Civil Rights Act, is therefore without application. Whatever may be the scope of the right to sue granted by 42 U.S.C. §1983, it extends in any event only to "the *deprivation* of any rights, privileges, or immunities

secured by the Constitution and laws [of the United States]". (Emphasis added).

Hence—repeating—even if the form of examinations given by the Committee, or their scope and difficulty in allegedly exceeding the educational qualifications prescribed for taking them, or the Committee's grading of them, had been actions which abstractly could be violative of due process or unequal protection, this could not give rise to any right of federal remediability until it had been made the basis of a deprivation of admission. And such a deprivation could not legally occur until the California Supreme Court had expressly or impliedly approved the Committee's refusal to certify and thus had allowed the Committee's actions to become the basis of denial of admission.

Appellant contends, however, that it would be useless to ask the California Supreme Court to give consideration to the Committee's refusal of certification as a challenge to the Committee's examination actions. Even if this were true practicably, it would not enable the condition to be escaped that legally the Committee's action is without power to effect deprivation and that it can only come to have that consequence if it is given approval by the California Supreme Court and so allowed to become the basis of denial of admission.

We might add, however, that we can see nothing in the expressions of the California Supreme Court to indicate that that Court would not engage in due consideration of an attack upon the actions of the Committee for infirmities of substance which, if given approval and so allowed to effect denial of admission, would cause an applicant to be deprived of admission on violation of the Due Process or Equal Protection Clause of the Fourteenth Amendment.

The Court has stated in effect that it will not engage in a regrading of examination papers—as no federal court is likely to do either. It said in *Staley v. State Bar*, 17 Cal.2d 119, 121, 109 P.2d 667, that "Inability to pass the examinations, which are successfully passed by other applicants, will, of course, not be inquired into by the court". But it added that "if any dissatisfied applicant can show that he was denied passage of the state bar examinations through fraud, imposition or collusion, this court is willing to listen to his complaint".

While it is of no importance here, we think there can be no reason to doubt that if, such overwhelming numbers of those taking the examinations regularly failed to pass as reasonably to imply, either that examinations were being given of such scope or difficulty as to be outside the range of the educational prescriptions which have been made the basis of the right to take the examination, or that the Committee was engaging in improper grading in order generally to restrict admissions, the California Supreme Court would engage in appropriate inquiry.

We have held (1) that the contentions made by appellant do not on their facts present questions of constitutional substance, and (2) that even if any such substance had been involved, no deprivation of rights in relation thereto could exist as a basis for seeking federal relief until the California Supreme Court had given the Committee's actions effect as a denial of admission. In view of the basic aspects of this disposition, it is not necessary to deal with the other contentions urged by appellees for affirmance. Some of these have been the subject of express or implied holding in *Clark v. State of Washington,* 9 Cir., 366 F.2d 678. One of them —whether improper denial of admission to the bar or improper action of disbarment on the part of a State is at all (even injunctively only) subject to remedy under the Civil Rights Act or whether it is reachable solely through petition for certiorari to the United States Supreme Court from the state court order—is referred to in *Clark,* 366 F.2d at 680-681, but not expressly answered, as it need not be here.

Affirmed.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO 11-27-67—255

APPENDIX II

Points in Answer to Opinion of Court Below

ASSUMPTION OF RIGHT

The opinion, on page 3, states that "California has the right" to give subjective (arbitrary) type tests. Petitioner has examined the pertinent provisions of the State Bar Act (B & P Code, Sections 6001 et seq.) and cannot find where any such right is stated. Therefore, it is an assumed right, which is the main controversy in this case. Petitioner contends California (meaning the State Bar) has no such right.

SOURCE OF AUTHORITY

The court below, on pages 2 and 3, cites the American Bar Association as authority for assuming the right to give essay (subjective) type examinations. This court, and the one below, knows that American Bar Association opinions have no legal force. Petitioner quotes federal and state statutes and the opinions of the court as his authority, and these do have legal force.

The court below also establishes the appropriateness of essay (subjective) examinations by pointing out that they are used in most law schools. This may be true. However, the court below makes no showing that law schools and integrated state bars are in a comparable position, which they are not, because they have different functions, nor is there any showing that law schools are necessarily Democratic in their examinations.

RATIONAL CONNECTION

The court below, at the middle of page three in its opinion, makes the point that there is a "rational" connection between an essay (subjective) type examination and establishing qualifications. Petitioner agrees that the essay (subjective) type examination has a rational connection in the sense that it is one way of testing. However, it is nonetheless an arbitrary way, and arbitrary examinations have been forbidden by this court. Furthermore, your petitioner is prepared, when and if he gets to trial, to put on the evidence of psychologists showing that essay (subjective) type testing is regarded as one

of the most unreliable forms of testing.

CONTROL OF COMPETITION

The court below states in its opinion on page 4 that an allegation of control of competition can only have basis in (1) dishonest grading, or (2) if the bounds of the examination are outside "the educational prescriptions which the California statute has made the basis for the right to take the examination."

It is impossible to prove the former. Judgment may be good or bad, but it can never be dishonest. As to the latter, petitioner points out that the United States Attorney General used statistics to support his contention in United States vs. Louisiana, supra, that Negroes were being systematically discriminated against in voting rights. The only difference in that case and the instant case is that color was the basis for discrimination in the former, while numbers is the basis for discrimination in the latter.

Petitioner's statistics also suggest that the bounds of educational prescription mentioned by the court below are obviously being exceeded, since less than half of examinees are passing.

HIGH STANDARDS

The court below in its opinion on page 5 said California (meaning the State Bar) is entitled to demand higher standards than other states. Petitioner contends there is no standard in California, but rather there is a system of subjective selectivity. Examinees are graded on the basis of what the reader thinks about them at the time he reads their examination papers. When the decision rests purely with the will of the grader, it can hardly be called a standard examination, because it defies measurement by anyone else but the grader.

EXHIBIT A

IN THE SUPREME COURT OF THE

STATE OF CALIFORNIA

Jerry D. Chaney
1800 W. Lincoln Ave., Apt. 227
Anaheim, Calif. 92801,
Applicant

Ex parte Motion

The above named applicant moves that this court admit him to active membership in the State Bar of California and that the clerk of this court be ordered to issue to him a license to practice law in the State of California.

Jerry D. Chaney
Jerry D. Chaney
Applicant

AFFIDAVIT IN SUPPORT OF MOTION
FOR ADMITTANCE TO STATE BAR OF
CALIFORNIA AND FOR LICENSE TO
PRACTICE LAW

State of California)
) ss
County of Orange)

I, Jerry D. Chaney, certify, under penalty of perjury, that the following is true and correct:

1. I am a citizen of the United States.

2. I am over the age of 21.

3. I have never been arrested or charged with any crime other than minor traffic violations, and I enjoy a good reputation (see attached list of references).

4. I have been a resident of the State of California for over eight years.

5. I have successfully completed over two years of undergraduate college education and have completed three years of legal education.

6. I hold a bachelor of science degree from the American University in Washington, D. C., and a bachelor of laws degree from the same university.

7. I registered with the Committee of the Bar Examiners of the State Bar of California as a law student on May 2, 1960, duly paying my regular and late filing fees. I was assigned registration number LR-5590.

8. I took the examinations given by the State Bar of California in the fall of 1960, spring of 1961, fall of 1965 and spring of 1966. I failed each of these examinations.

Jerry D. Chaney
Jerry D. Chaney

Jan 2 1968
Date

LIST OF REFERENCES

State Senator Gordon Cologne
State Capitol
Sacramento, Calif.

Judge Richard Marsh
Superior Court
County of Riverside
Indio, Calif.

Thomas Selman
City Manager
City of Indio, Calif.

Tom Anderson
Attorney
45-926 Oasis St.
Indio, Calif.

John Carroll
Attorney
45-926 Oasis St.
Indio, Calif.

Odra Chandler
Attorney, City Councilman, Anaheim
2125 Altanta St.
Anaheim, Calif.

Calvin Pebley
Mayor, City of Anaheim
City Hall
Anaheim, Calif.

G. E. BISHEL, CHIEF DEPUTY

DEPUTIES

JOSEPH M. ROGERS
KEITH M. HAWKES
REMO C. MATTEOLI
MARK F. THOMPSON
SAN FRANCISCO

DAVID BLOMGREN
ROBERT F. JOHNSON
LOS ANGELES

A. F. BRADOVICH
SACRAMENTO

EXHIBIT B

OFFICE OF THE CLERK

Supreme Court of California

WILLIAM I. SULLIVAN, CLERK

San Francisco, California

5 January 1968

OFFICES

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4250 STATE BUILDING

LOS ANGELES 90012
1006 STATE BUILDING

SACRAMENTO 95814
109 LIBRARY AND COURTS BUILDING

Mr. Jerry D. Chaney
1800 West Lincoln Ave., Apt. 227
Anaheim, Calif. 92801

Dear Sir:

At the request of the court we are returning herewith, unfiled, the original and nine copies of a document as presented by you and titled "Ex Parte Motion."

From a reading of the document it appears that your proper remedy is a petition for a writ of review.

Your attention is invited to the provisions of Rule 59(b), California Rules of Court, in which the procedure to be followed is set forth. This includes service of three copies on the respondent of the petition sought to be filed.

As this remedy is civil, by statute, there is required the payment of a filing fee in the amount of $50.00. There is no provision for waiver of the requisite fee.

Very truly yours,

William I. Sullivan
Clerk of the Supreme Court

By: G. E. Bishel
G. E. Bishel
Chief Deputy

GEB:kt
Enc.